U.S. Department of Homeland Security
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Washington, DC 20529

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PUBLIC COPY

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 2 5 2008

EAC 03 091 52707

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. On the I-140 petition, which the petitioner signed on November 26, 2002, but did not file until January 29, 2003, the petitioner indicated that he seeks employment as a financial analyst at the World Bank. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

On the I-140 petition form, the petitioner indicates that he seeks employment as a financial analyst. He signed the Form I-140 on November 26, 2002, but he did not actually file the petition until January 29, 2003.

Counsel states that the petitioner "is a high level financial analyst, specializing in the area of government bond market development. . . . Since March 1998, [the petitioner] has been working for the Capital Markets Development Department in the World Bank." Counsel contends that the petitioner helped South Korea to recover from a serious financial crisis, "played a critical role in assessing [Indonesia's] government bond markets," and led the effort "to produce an Economic Revival Strategy for the province of Sindh" in Pakistan. Counsel asserts that the petitioner's "work in the field of finance, in particular government bond markets, is clearly in the national interest of the United States."

The petitioner discusses his work in an undated personal statement accompanying the initial filing:

> Over the past four years, providing technical assistance for capital market development in general and government bond market in particular has developed into a core area of financial sector assistance provided by the World Bank. . . . [T]hrough our work, these countries are less vulnerable to macroeconomic and financial shocks.
>
> To assist in mainstreaming government bond market development, I managed the production of a joint IMF-World Bank publication, "Developing Government Bond Markets – A Handbook" in 1999-2001, which has become the standard reference in the field. . . . I have produced surveys of government bond markets in Eastern Europe and Central Asia, and the

> Middle East and North Africa, which constitute the most updated and comprehensive information about these markets. Most recently, I have produced a study which benchmarks the capital markets of Saudi Arabia, and proposes reforms. . . .
>
> I am deeply committed to the strengthening of financial markets worldwide. My work in privatization and government bond market development has honed within me complementary perspectives on how to build a market. . . .
>
> In today's globalized world . . . it is critical for countries to strengthen their financial infrastructure. Failure to do so makes them vulnerable to financial and macroeconomic shocks, bank runs and capital flight. It is in the best interests of the United States, which has traditionally been the supplier of capital to developing countries, that emerging markets build resilient financial systems, core components of which are vibrant and liquid bond markets. . . .
>
> The World Bank leads the effort to develop emerging bond markets, and my work in building the government bond market development practice of the Capital Markets Development Department (CMD) at the World Bank is pioneering.

Six letters, all from people who have worked closely with the petitioner, accompany the initial filing of the petition. All the letters are dated late September 2002. We consider examples of these letters here. [redacted] [redacted]director of Research at the World Bank, states:

> Prior to my position at the World Bank . . . I was Visiting Professor at the Kennedy School of Government, Harvard . . . and it was during this period that I first met [the petitioner]. . . .
>
> [H]e was an outstanding student in my class on international economics. . . . I have been extremely pleased to note his success, as he first joined the privatization group at the World Bank, and then moved over to the Capital Markets Development Department (CMD) to undertake pioneering work in the field of government bond market development.

[redacted], lead financial economist in the Financial Sector Operations and Policy Department of the World Bank, states:

> I have worked closely with [the petitioner] on the comprehensive, multi-year Korean capital market development project. [The petitioner] ably managed the project from 1998-2002. . . . Consequently, the Korean bond market is regarded as having accomplished one of the most impressive sets of reforms amongst all Asian countries, after the Asian financial crisis. . . .
>
> [The petitioner] contributed to the development of a joint World Bank-IMF handbook on reforming government bond markets, which has become the standard reference for debt-managers worldwide. . . .

> By strengthening bond markets, [the petitioner] has invigorated the essential component of the financial sector, described as the "spare tire of the economy" by [redacted] critical for increasing a country's resilience against financial shocks. His work contributes toward enhancing global financing stability, promoting growth, and reducing economic and political vulnerability.

The remaining witnesses are also World Bank employees who have worked with the petitioner, or adjunct professors who have taught the petitioner or utilized him as a teaching assistant. The record contains nothing from South Korea, Indonesia or Pakistan to confirm the nature or extent of the petitioner's impact upon the economies of those countries, or to show that the opinions expressed in the petitioner's witness letters are shared outside of his group of colleagues at the World Bank.

The petitioner submits copies of documents that he wrote or co-wrote, published between 1995 and 2002. The petitioner refers to the documents as published articles, but they are internal World Bank reports, student papers, and the like. Most of the World Bank reports specifically indicate that they have "restricted distribution" and their contents cannot be disclosed without authorization. This restrictive access appears to be the antithesis of "publication."

The only document that appears to have been "published" is *Developing Government Bond Markets: A Handbook*. As [redacted] states, the petitioner was involved in putting this handbook together, but his was not a primary role. The handbook was prepared by "core groups" of 15 World Bank officials and ten individuals from the International Monetary Fund, assisted by two "external consultants." The petitioner is one of four World Bank workers "who conducted background research, compiled and analyzed data, prepared tables and graphs, and provided general support."

The director denied the petition on November 17, 2004, stating: "we generally expect that an alien who has had such a substantial impact on the field that the granting of a national interest waiver would be warranted, would be known outside the circle of his personal acquaintances." The director stated that the petitioner has not established the impact of his work, or that he "is particularly authoritative in his field relative to the myriad of other individuals who are similarly employed." The director concluded that the petitioner has not distinguished himself from others in his field to an extent sufficient to warrant the special, additional benefit of a national interest waiver. The director acknowledged the intrinsic merit of the petitioner's work, but found that the petitioner had not established the national scope of his work.

The petitioner filed an appeal on December 20, 2004, and requested an additional 30 days to submit a brief and supplemental materials. Counsel's supplemental brief is dated January 14, 2005. On appeal, counsel argues that the petitioner's work is national in scope because of the international, interconnected nature of the global economy. We concur that the development of governmental bond markets is national in scope, and that the director offered no clear explanation for finding to the contrary.

Counsel concedes that "some of the authors of the [initial] letters are indeed professional acquaintances of" the petitioner. (In fact, all, rather than "some," of them have worked directly with the petitioner.) Nevertheless, counsel compares the present proceeding to an unpublished appellate decision from 2000 in

which, counsel asserts, the AAO found that "the caliber of the witnesses was very high and that INS must give considerable weight to their expertise when evaluating the relative significance of the petitioner's work." Leaving aside the fact that unpublished appellate decisions have no force as precedent and are not binding on future adjudications, we note that, in the cited case, the AAO's comments were aimed at two witnesses. One witness was a member of the National Academy of Sciences, and the other "received a first place ranking [from] the Institute for Scientific Information for publishing the highest number of worldwide influential papers in 1998" (internal quotation marks omitted). The petitioner has not shown that the witnesses in this present matter have attained comparable levels of achievement.

Counsel asserts:

> [The petitioner] has clearly made substantial, outstanding and extraordinary contributions to his field that have been documented as so in the information we have presented. We clearly believe that [the petitioner] has provided sufficient documentation to show that the national interest in his presence on the projects he is working, overcomes the national interest of maintaining the normal labor certification and job offer processes.

Later in this decision, we shall return to the issue of the projects on which the petitioner "is working."

The petitioner submits new witness letters on appeal, dated December 2004. [redacted], vice president of Global Technology Organization for Deutsche Bank, states that the petitioner's "work has enabled governments to make dramatic progress in developing broad, liquid, credible and technologically modern government bond markets in the emerging markets of East Asia and the Middle East." He adds that "the worldwide dissemination of the science of building government bond markets has been made possible through the publication of 'Developing Government Bond Markets' produced by" the petitioner. As shown above, the beneficiary was not credited as an author of *Developing Government Bond Markets*, nor was he otherwise largely responsible for its production. Rather, he and others performed data collection and other supporting work on behalf of a 25-member "core team" that actually created that handbook. Witness statements, independent or otherwise, necessarily carry substantially less weight when contradicted by objective evidence in the record.

[redacted] a dispute resolution attorney in San Francisco, states that, thanks to the petitioner's efforts, "relatively deep and liquid bond markets have developed" in East Asia. She does not specify how she came to learn of the petitioner's work, nor does she establish expertise in governmental bond markets beyond the assertion that she "routinely monitor[s] developments in global finance."

As for the remaining witnesses, there is no indication that their letters derive from any particular expertise in international finance rather than from having studied at the Kennedy School of Government at the same time as the petitioner.

Counsel, on appeal, protests that the director did not issue a request for evidence, pursuant to 8 C.F.R. § 103.2(b)(8). For reasons to be discussed presently, the AAO determined that the issuance of such a notice would be necessary to resolve unanswered questions that emerged from examination of the record.

The beneficiary of an immigrant visa petition must be eligible at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998).

While *Katigbak* and *Izummi* require the alien to be eligible as of the petition's filing date, there is no requirement that prevents consideration of potentially disqualifying evidence that emerges after the filing date. For example, if an alien seeks to enter the United States to work as a physician, but subsequently loses her license to practice medicine, we are not obliged to disregard this information, as it has a direct bearing on the alien's ability to provide the prospective benefit upon which the petition is based. This position is fully consistent with the reasoning in *Katigbak* and *Izummi*, in that an alien must not only be eligible at the time of filing, but must also remain eligible thereafter. Furthermore, because the waiver is intended to secure prospective (i.e., future) benefit to the United States, the waiver cannot simply be a reward for past work. Rather, the waiver is intended to secure the alien's future services in the same field in which the alien has already demonstrated significant expertise. If an alien has left the field of endeavor through which he claimed to serve the national interest, then this change of field is highly material, indeed central, to any subsequent adjudication.

With the above in mind, the AAO observed that the petitioner's G-4 nonimmigrant classification, through which he had been working at the World Bank, was no longer in effect when appellate adjudication commenced in the summer of 2005. In an effort to ascertain the petitioner's subsequent activities, the AAO issued a request for evidence on August 17, 2005. That notice read, in part:

> On the Form I-140 petition, you indicated that you seek a national interest waiver in order to work as a financial analyst at the World Bank. Your application for the waiver was predicated on your claim to be "deeply committed to the strengthening of financial markets worldwide." . . .
>
> Please submit new letters and supporting documents (such as payroll records) to provide a complete accounting of all your employment and employment-related activities from January 2003 to the present, including the following information:
>
> - The names of all your past and current employers since January 2003;
> - Valid contact information for an authorized official of each employer;
> - All job titles you have held;
> - The duties of all those positions;
> - An explanation as to how your performance of those duties contributes to the strengthening of financial markets;
> - A detailed description of any academic studies you have undertaken since 2003; and
> - An explanation as to how those studies (if any) relate directly to financial markets.

> Finally, please provide a written statement explaining your future goals. This information is directly relevant to the question of prospective national benefit. The national interest waiver is predicated not only on what an individual has done in the past, but also what the individual intends to do in the future.

In response, the petitioner has submitted an updated resume; letters from the District of Columbia State Education Office (SEO); background documents; and arguments from counsel. The petitioner did not submit the requested payroll documentation or contact information for an authorized official of each employer as instructed, nor did the petitioner explain his failure to provide this evidence. All evidence submitted in response to a Service request must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record. 8 C.F.R. § 103.2(b)(11).

The petitioner's newly submitted resume indicates that he left the World Bank in January 2003. If this is correct, then he had already left the World Bank (or his departure was imminent) at the time he filed the petition on January 29, 2003. Nevertheless, the petitioner portrayed his work at the World Bank as a cornerstone of his waiver application.

The petitioner's resume is divided into "International Development Expertise," ending with his January 2003 departure from the World Bank, and "Education Sector Expertise," consisting of three claimed positions:

> Math and Physics Instructor, Student Newspaper Advisor, Luke Moore Academy DC Public High School, February 2003 – August 2005
>
> Director, International Programs, Iqra University, Pakistan, July 2004 – Present
>
> Education Policy Analyst, Policy Research and Analysis Dept., DC SEO, Executive Office of the Mayor, Washington, DC, August 2005 – Present

The resume also indicates that the petitioner is studying for a Ph.D. in Education at the University of Maryland, College Park. This graduate study, combined with the petitioner's above employment, very strongly indicates that the petitioner's focus has shifted from government bond markets to education.

The petitioner submits documentation from the District of Columbia SEO attesting to his work in the Washington educational system, but nothing from Iqra University to verify the petitioner's employment, title, or duties, or to explain why the petitioner is based in Washington if the university is in Pakistan.

In the January 14, 2005 appellate brief, counsel never acknowledges or mentions that the petitioner had, years earlier, ceased working for the World Bank or for any comparable financial entity. Instead, on page 6 of the brief, counsel states that the petitioner merits a waiver based on "the national interest in his presence on the projects he is working." The present-tense assertion that the petitioner "is working" on these projects falsely implies that the beneficiary was, as of the date of the brief, still working on projects relating to the basis for the waiver claim. In fact, as of January 2005, the petitioner was teaching high school math and physics.

As noted above, the petitioner also claims to have been director of International Programs for Iqra University in Karachi, Pakistan, since July 2004, but he submits nothing to corroborate this claim, nor does he explain why an official holding this position would be based in Washington, DC, rather than in Karachi. Despite the AAO's clear instruction to provide evidence and contact information, the petitioner has provided no basis for the AAO to conclude that his claims regarding his work at Iqra University are accurate or credible. Even if verified, such employment has no demonstrated link to international finance or government bonds.

Counsel attempts to link the petitioner's recent work with the petitioner's prior claims:

> [The petitioner] will support the SEO's efforts to standardize data across public schools and public charter schools in the District of Columbia. He will also be responsible for providing assistance in managing the annual student enrollment audit, providing research and analysis in connection with the recommendations for the Uniform Per Student Funding Formula, assisting the division in developing and enhancing outreach strategies, and providing general support for developing and implementing a PR & A research, data collection and information dissemination agenda. These policy decisions and information will go out across the entire United States and effect the manner in which educational systems are run across the country.
>
> From February of 2003 until August of 2005, [the petitioner] was primarily employed as a Math and Physics Instructor at Luke Moore Academy, a DC Public High School. While there, he taught Geometry, Business Mathematics and similar courses to high school students. Though this does not directly relate to the financial aspects of Education Policy, it was a necessary step in his transition to Education Policy Analyst. [The petitioner] took this position in order to familiarize himself with the DC educational system so that he could more effectively administrate his fiscal plans upon obtaining this new position.

The last sentence in the above paragraph requires the assumption that, as early as February 2003, the petitioner knew that he would eventually be an education policy analyst with the DC public school system, and taught for over two years in order to prepare himself for that analyst position. The record does not show that the DC school system offered or promised the petitioner the position, contingent on the petitioner's accumulation of teaching experience.

Counsel continues:

> [The petitioner] is also a Ph.D. candidate in International Education Policy, Education Policy and Leadership at the University of Maryland, College Park. His coursework includes such classes as qualitative research and political economy of education. This academic experience will not only allow [the petitioner] to more effectively integrate his considerable fiscal skills into the field of Education Policy, but it will also maximize the efficacy of his financial policies for the District of Columbia and help to set precedents that will be extremely beneficial on a national level.
>
> Though it is not obvious that [the petitioner] has continued in his area of expertise, after more

> careful consideration, it becomes apparent that he has used his time to develop his financial skills and adapt them to the realm of Education Policy. Clearly, his deep commitment to strengthening financial markets remains despite his instrument changing from the World Bank to the DC State Education Office.

Counsel's contention that the continuity of the petitioner's work is apparent upon "careful consideration" does not take into account the petitioner's failure to offer significant evidence for CIS to consider. If the beneficiary's goal continues to be development of financial markets, it remains to be answered why the petitioner believed that he could reach this goal more effectively by leaving the World Bank, which "leads the effort to develop emerging bond markets," in order to work for the DC public school system. Counsel had claimed, earlier, that the petitioner's "work in the field of finance, in particular government bond markets, is clearly in the national interest of the United States." The petitioner has quite obviously ceased working in government bond markets, thereby nullifying the principal basis for the waiver claim.

[redacted] director of Policy, Research and Analysis for the DC SEO, states that the petitioner, using "[h]is financial background and experience," "is helping us investigate innovative approaches to adequately funding public schools."

In a new statement, the petitioner does not explain his departure from the World Bank. He states:

> I have focused on the educational sector because I feel that it is in need of considerable assistance. . . . I am of the view that if the capital market can be successful tapped [sic] to overcome present funding constraints, the standards of schools, especially in the inner cities of the United States, have a high likelihood of improving considerably.
>
> At the moment, the resource distribution for public schools is highly imbalanced. . . . With the help of capital markets, this funding imbalance can be overcome.
>
> At the DC State Education Office . . . , I am focusing on channeling my expertise towards this essential cause. If this project can be successfully undertaken in Washington DC, it can prove to be a test case for the rest of the United States.

We do not find the petitioner's claims to be persuasive. In considering the credibility of the petitioner's arguments, we cannot overlook the fact that the appeal filed in 2005 contained no indication that, two years earlier (more or less simultaneously with the petition's filing), the petitioner had left the World Bank in order to work for the DC school system. At the very least, this amounts to a very significant omission of information that is directly material to the matter at hand. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The petitioner has produced no first-hand evidence to support the claim that his work has had a measurable impact on the economies of several Asian nations. Instead, the petitioner has relied on letters from co-workers and classmates. He clearly prepared reports for the World Bank, but this is not self-evident proof of eligibility. Also, whatever impact the petitioner's financial work may have had in the past, he ceased performing such work around the time he filed the petition. The claim that his subsequent work as a school teacher and administrator directly relates to international finance is neither plausible nor credible, and we reject it accordingly. The omission of this highly material information from the initial appellate filing in January 2005 is of deep concern.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.